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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL GARCIA,

Defendant and Appellant.

B263942

(Los Angeles County  
Super. Ct. No. KA096242)

APPEAL from a judgment of the Superior Court of Los Angeles County. Steven P. Sanora, Judge. Reversed and remanded.

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Adrian K. Panton, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

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Appellant Daniel Garcia appeals from the trial court's denial of his petition for resentencing under Penal Code section 1170.18,<sup>1</sup> on his conviction for grand theft person in violation of section 487, subdivision (c). The parties agree, as do we, that the trial court erroneously concluded that appellant's conviction did not qualify for resentencing as a misdemeanor under Proposition 47, the Safe Neighborhood and Schools Act. Accordingly, we reverse and remand.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In November 2011, appellant accompanied the victim, his acquaintance, to a Bank of America ATM. After the victim had withdrawn \$240 from the ATM, appellant grabbed the money from him and fled. Appellant was arrested and charged with a violation of section 487, subdivision (c) (grand theft person). He pleaded nolo contendere, and the trial court placed appellant on formal probation for three years on the condition that he serve 270 days in jail.

In March 2015, appellant filed a petition for recall of his sentence and resentencing under section 1170.18.<sup>2</sup> The trial court denied the petition, believing that appellant's conviction did not qualify for resentencing under Proposition 47. Appellant timely appealed.

### **DISCUSSION**

The parties properly agree that appellant's conviction for grand theft person is eligible for reclassification and resentencing under Proposition 47 despite involving "theft from a person." Proposition 47 unambiguously applies to section 487, subdivision (c) thefts even if the theft is from a person. Proposition 47 specifically reduced certain cases of felony grand theft to petty theft. Section 487, subdivision (c) proscribes taking property *in any amount* from the body of another person. (§ 487, subd. (c).) Proposition 47 added a new provision, section 490.2, which reclassifies

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> At that time, appellant was in custody awaiting a probation violation hearing on the current offense. In April 2015, the trial court found appellant in violation of probation in this case and sentenced him to serve two years in the county jail.

felony section 487, subdivision (c) grand theft violations into misdemeanors “where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950).” (See § 490.2, subd. (a).) The statute does not automatically disqualify appellant and nothing in section 1170.18 reflects an intent to disqualify him because the theft was from a person

The Attorney General also concurs with appellant, and we agree that his conviction is eligible for reclassification as a misdemeanor under section 1170.18, since it is undisputed the value of theft did not exceed \$950. “After a petitioner is found to be eligible, the trial court must grant the petition for reduction of sentence unless the court finds in its discretion that the petitioner poses an unreasonable risk of committing a very serious crime.” (*T.W. v. Superior Court* (2015) 236 Cal.App.4th 646, 652.) Accordingly, we must remand this matter to the trial court for reconsideration of appellant’s petition.<sup>3</sup>

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<sup>3</sup> The only point of disagreement between the parties concerns the application of section 1170.18, subdivision (d). According to the Attorney General, “[b]ecause appellant is still ‘serving’ his sentence in this case, i.e., actually in custody, he is clearly subject to Proposition[ ] 47’s one year misdemeanor parole requirement. Appellant should be resentenced in accordance with the misdemeanor parole requirement, and as it relates to the specifics of his probation violation in this case. (See § 1170.18, subd. (d).)” The Attorney General suggestion that appellant is automatically subject to the section 1170.18, subdivision (d)’s parole requirement is not well taken. The one-year period of parole supervision authorized by section 1170.18, subdivision (d) is discretionary. (See § 1170.18, subd. (d) [“A person who is resentenced pursuant to subdivision (b) shall be given credit for time served and shall be subject to parole for one year following completion of his or her sentence, *unless the court, in its discretion, as part of its resentencing order, releases the person from parole.*” (Italics added.)].) Thus, on remand, the trial court has the discretion under section 1170.18, subdivision (d) to impose or release appellant from the one-year parole supervision period.

### **DISPOSITION**

The order denying appellant's petition for resentencing under section 1170.18 is reversed. The case is remanded to the superior court with directions to reconsider the petition.

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ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

LUI, J.